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REED SMITH SHAW & McCLAY

1200 18TH STREET, N.W.  
WASHINGTON, D.C. 20036-2506  
202-457-6100

FACSIMILE  
202-457-6113  
TELEX NO. 64711

WRITER'S DIRECT DIAL NUMBER

(202) 457-8646

PITTSBURGH, PA  
PHILADELPHIA, PA  
HARRISBURG, PA  
MCLEAN, VA  
PRINCETON, NJ

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October 13, 1994

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

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OCT 13 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: Ex Parte Submission  
PR Docket No. 93-61

Dear Mr. Caton:

On behalf of MobileVision, L.P. ("MobileVision"), I am filing the original and one copy of this written ex parte communication pursuant to Section 1.1206(a)(1) of the Commission's Rules.

MobileVision, L.P., is compelled regrettably to add to the already voluminous ex parte file of this proceeding as a result of its concerns that recent efforts to lobby the Commission are clouding the focus of the rulemaking and have lead to delay, and may lead to further delay, in the long overdue promulgation of a rule addressing adequately its subject matter, viz., the promotion of "efficient operation and continuing growth of Automatic Vehicle Monitoring ... systems." [NPRM ¶ 1].

MobileVision is an entrepreneurial business that has been an innovator in the field of LMS-related technology for ten years. It and other providers have been stymied in their efforts to deploy LMS systems by the unavailability of capital funding for the last several years. This unavailability has not been as a result of lack of interest, of which there has been substantial expression in the capital markets, but rather is the direct product of the uncertainty regarding LMS rules that has existed since the Petition for Rulemaking was filed on May 28, 1992, almost two and a half years ago. The delays in bringing this proceeding to its conclusion have already substantially overtaxed the financial capability of MobileVision; any further delay in

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the issuance of LMS rules will be fatal to its continued viability.

The Commission has a record on which to premise sensible and sound rules to achieve the objective of this proceeding. It should not moot the ability of entrepreneurs to participate in this, or another segment, of the communications industry by permitting those with more adequate combined financial resources to indefinitely postpone the conclusion of a critical rulemaking by raising issues subsidiary to that objective, such as those raised by the unlicensed Part 15 users regarding interference criteria or raised by Southwestern Bell regarding future auctioning rules for spectrum not subject to license grandfathering.

In August of this year, the staff of the Private Radio Bureau, proposed certain basic concepts for further comments. These basic concepts included: exclusive wideband LMS allocation of two 6 MHz sub-bands; grandfathering of existing licensees; and eventual auctioning of wideband allocations. While MobileVision has urged that the 8 MHz bands provided for in the Interim Rules for some twenty years should remain the basis for the current rulemaking, its comments supported the new allocation and applauded the PRB staff proposal for recognizing that the record in this proceeding has established clearly the need for wideband LMS use without the destructive interference that would arise if ill-conceived proposals for sharing of frequency were adopted.

The PRB proposals also made clear that use of Part 15 devices would retain its current unlicensed status within the bandwidth with the corresponding responsibility not to interfere with licensed LMS systems.<sup>1</sup> The proposals did seek comment, however, on criteria and presumptions regarding interference by such devices. MobileVision expressed its support for the promulgation of such criteria and has submitted extensive material on the nature and extent of the interference that has and will be experienced under various conditions of Part 15 and wideband LMS use.

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<sup>1</sup> Since the conditions and restrictions attached to these users are contained in Part 15 of the Commission's Rules and the NPRM did not address possible changes to that Part, any change in status would not properly be a part of this LMS rulemaking in any case.

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Herewith, MobileVision addresses the primary remaining issue and offers proposals in dealing with that issue and those that appear to be creating delay in the issuance of final rules.

### TRANSITION PERIOD

The principal issue for focus at this juncture, assuming that the Commission determines to auction bandwidth for LMS services in the future, is the transition rules for current licensees. Some possible misconceptions should be addressed before considering that issue:

- ° Transition rules will not grant rights to current licensees. Rather, they already have license rights as well as time remaining to build out under their currently held licenses. Transition rules will provide for mechanisms through recognized first to build criteria to determine which licensees will continue to hold rights in bandwidth now to be recognized formally as exclusive. Transition rules can also provide for later auctioning in a defined way by substituting a single build out deadline for the many individual license deadlines that now exist.
- ° The current licensees have not "warehoused" spectrum. That concept relates to the accumulation of licenses without a current intent to use, while depriving competitors of their availability. There has been no deprivation of use since any party in this proceeding could have obtained licenses identical to those held by the current licensees since the Commission issued them on a nonexclusive basis under the Interim Rules. As to the current intent to use, but for the initiation of this rulemaking and its extended nature, MobileVision, at least, would have received the necessary capital infusion and already been deployed in the major markets for which it holds licenses.
- ° The current licensees will not be inappropriately favored by the creation of grandfathering provisions

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but, rather, such provisions would simply recognize the equities in permitting a sufficient time for entrepreneurial companies who have expended years of labor and investment in the technology development to be permitted the fruits of that effort. To do otherwise is contrary to the public policy of providing such rewards and, in this industry, will permit success to only those who idly sit by with the larger purse awaiting the opportunity to bury private innovators in a an avalanche of auction dollars. Any balance of interest that does not recognize these equitable considerations will be shortsighted and without vision of true public interest.

MobileVision has already addressed transition rules in detail in its August 12 ex parte submission and believes the comments therein constitute an appropriate framework on which to proceed. For the reasons set forth in that submission, MobileVision submitted that a three year period for build out for grandfathering purposes would be appropriate. While it still believes that is the case, if the Commission adopts the standards of Section 90.155(c) as the build out criteria, MobileVision could support a lesser transition period of eighteen months beginning from the effectivity of the final rules.

PART 15

Various representatives of the Part 15 community have been proponents of delay in this proceeding. These representatives seek to initiate at this late date an industry to industry dialogue on coexistence and technical criteria to avoid and resolve interference. Certain of these representatives have sought to delay the issuance of LMS rules in order to do so. But such a dialogue need not delay this proceeding.

While such a dialogue should be useful, it need not be concluded until after delineation of the rules for LMS licensing and operation that are the core of this proceeding. Prior conversations and meetings between principals in these industries have proven unsatisfactory since they have inevitably resulted in claims and arguments by the Part 15 community that, contrary to current clear restrictions, the use of their devices should be on a coequal status.

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MobileVision believes that the development of criteria and presumptions regarding interference will be mutually advantageous to both industries and will make resolution through communication rather than through dispute and adjudication of actual, rather than imagined, problems commonplace. To that end, MobileVision is currently participating in efforts to seek consensus on such criteria. But MobileVision believes that such efforts can and should continue after the establishment of a bandwidth allocation scheme, addressed from the perspective of the LMS providers whose services are the subject matter of this proceeding, and the reiteration of the subordinate status of Part 15 users. In any event, such efforts should not delay this proceeding another day.

To insure that such dialogue continues and is meaningful, MobileVision proposes that the Commission issue its Order in this proceeding, including those technical sections on rules or operating guidelines that deal with Part 15 interference criteria but postpone the effectivity of the latter for ninety (90) days beyond the effectivity of the balance of the LMS rules. Before the conclusion of the suspense period, the LMS and Part 15 industries will have the opportunity to develop more appropriate criteria, if necessary, and the Commission can reissue those criteria in substitution or in addition to the issued rules regarding interference by Part 15.

### SOUTHWESTERN BELL'S PROPOSAL

Delay has also been engendered by the introduction of a radical eleventh hour proposal by Southwestern Bell that existing unbuilt licenses should not be grandfathered at all but "must be cancelled immediately" upon the effective date of the Order. Further, contrary to the weight of the LMS industry filings in this proceeding, Southwestern Bell would apparently urge immediate auctions of two MHz segments that could be "aggregated."

There is no basis in the record at all for allocations in two MHz blocks and economic utility of possessing such a "slot" would only exist for those who would create a limited location service adjunct and dependent on cellular. The limitation of "real players" in any auction to those with that prerequisite is not consistent with making available to the public the benefits of security, safety and productivity that a full service and stand alone location service over 6 MHz could provide and provide more cheaply than that combination. (Southwestern Bell would achieve

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the same result by its urging that services be limited for LMS licenses rendering a cellular/LMS package the only market efficient product.)

Nor would the playing field be even if Southwestern Bell's suggestion were adopted. A bidder seeking only two MHz could, by judicious timing of bids among the 6 MHz sub-band sought by LMS competitors, raise the price of any such 6 MHz sub-band artificially. The end result of that auction game would be, however, that two of the two MHz bands would go fallow.

It is not surprising that Southwestern Bell wishes to revoke all licenses immediately. While it could have sought and obtained such licenses over the last several years, it either simply chose not to or did not have the technology to use them (in spite of its capital resources). By adopting the Southwestern Bell proposal, the Commission would send the message that reliance on its licensing of spectrum is without meaning. The message would instead be that those who do little or nothing to advance the technology or develop the systems can wait patiently by and eradicate the efforts of those who make such advances and developments by the simple act of signing the larger check. Public policy would not be well served with such a result.

But the Commission does not need to decide if the spectrum should be auctioned in two, four or six MHz sub-bands. Since fair transition rules would provide for an build out period, a further notice limited to deriving the fairest and most effective auction technique should be issued during the transition period and can result in an Order setting forth the auction procedure well prior to the earliest date such an auction could be first held. Given the late entry in this proceeding of the idea of auctions, such a procedure would seem to balance the need for careful consideration of the auction procedure with the prompt issuance of an Order providing rules governing LMS operations and thus permitting the system providers to make services available to the public without further delay.

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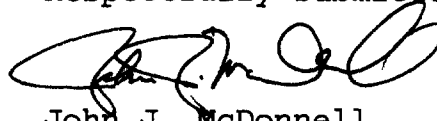
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For the reasons set forth above, MobileVision respectfully urges the Commission to issue its Order in this matter consistent with the comments herein without further delay.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. McDonnell", written in a cursive style.

John J. McDonnell

JJM/agw

cc: Attached Service List

**CERTIFICATE OF SERVICE**

I, América G. Wear, hereby certify that copies of the foregoing **Ex Parte** filing were forwarded this 13th day of October, 1994 by U.S. first-class mail to the following individuals:

- \* Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554
- \* Commissioner Andrew C. Barrett  
Federal Communications Commission  
1919 M Street, NW, Room 826  
Washington, DC 20554
- \* Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554
- \* Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, NW, Room 832  
Washington, DC 20554
- \* Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, NW, Room 802  
Washington, DC 20554
- \* Ruth Milkman  
Office of the Chairman  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554
- \* Rudolfo M. Baca  
Office of Commissioner James Quello  
Federal Communications Commission  
1919 M Street, NW, Room 802  
Washington, DC 20554



- \* David R. Siddall  
Office of Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, NW, Room 832  
Washington, DC 20554
- \* Jill M. Lockett  
Office of Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, NW, Room 844  
Washington, DC 20554
- \* James R. Coltharp  
Office of Commissioner Andrew Barrett  
Federal Communications Commission  
1919 M Street, NW, Room 826  
Washington, DC 20554
- \* Ralph A. Haller, Chief  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 5002  
Washington, DC 20554
- \* F. Ronald Netro  
Engineering Assistant to the Chief  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 5002  
Washington, DC 20554
- \* Rosalind K. Allen, Acting Chief  
Land Mobile & Microwave Division  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 5202  
Washington, DC 20554
- \* Gerald P. Vaughan  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 5002  
Washington, DC 20554
- \* Martin D. Liebman, Deputy Chief  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 5126  
Washington, DC 20554

- \* Bruce A. Franca, Deputy Chief Engineer  
Office of Engineering and Technology  
Federal Communications Commission  
2025 M Street, NW, Room 7002-A  
Washington, DC 20554
- \* Richard B. Engelman, Chief  
Technical Standards Branch  
Office of Engineering and Technology  
Federal Communications Commission  
2025 M Street, NW, Room 7122-B  
Washington, DC 20554

David E. Hilliard, Esq.  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

Kathleen Abernathy, Esq.  
AirTouch Communications  
1818 N Street, NW  
Washington, DC 20036

Louis Gurman, Esq.  
Gurman Kirtis Blask &  
Freedman, Chartered  
1400 16th Street, NW  
Suite 500  
Washington, DC 20036

Henry M. Rivera, Esq.  
Larry S. Solomon, Esq.  
Ginsburg, Feldman & Bress  
1250 Connecticut Avenue, NW  
Washington, DC 20036

Henry Goldberg, Esq.  
Henrietta Wright, Esq.  
Goldberg & Spector  
1229 19th Street, NW  
Washington, DC 20036

  
América G. Wear

\* Delivered by Hand